

State of Wisconsin



2021 Senate Bill 71

Date of enactment: **December 6, 2021**

Date of publication*: **December 7, 2021**

2021 WISCONSIN ACT 116

AN ACT *to repeal* 165.77 (7) and 175.405; *to amend* 165.845 (title), 165.845 (1r) (a) (intro.), 165.845 (1r) (a) 1. and 165.845 (1r) (b); and *to create* 165.775, 165.845 (1r) (e) and 895.537 of the statutes; **relating to:** storage and processing of sexual assault kits and requiring the exercise of rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 165.77 (7) of the statutes is repealed.

SECTION 2. 165.775 of the statutes is created to read:

165.775 Sexual assault kits. (1) In this section:

(a) "Department" means the department of justice.

(b) "Health care professional" has the meaning given in s. 154.01 (3).

(c) "Sex offense" has the meaning given in s. 949.20 (7).

(d) "Sexual assault forensic examination" means an examination performed by a health care professional to gather evidence regarding a sex offense.

(e) "Sexual assault kit" means the evidence collected from a sexual assault forensic examination.

(f) "Wisconsin law enforcement agency" has the meaning given in s. 165.77 (1) (c).

(2) Whenever a health care professional conducts a sexual assault forensic examination and collects a sexual assault kit, the health care professional shall do one of the following:

(a) If the victim chooses to report the sexual assault to a Wisconsin law enforcement agency, or if reporting is required under s. 48.981 (2), notify a Wisconsin law

enforcement agency within 24 hours after collecting the sexual assault kit.

(b) If the victim chooses not to report the sexual assault to a Wisconsin law enforcement agency, and reporting is not required under s. 48.981 (2), send the sexual assault kit to the state crime laboratories for storage in accordance with the procedures specified in the rules promulgated under sub. (6) within 72 hours after collecting the sexual assault kit.

(3) If a Wisconsin law enforcement agency receives notification under sub. (2) (a), it shall do all of the following:

(a) Take possession of the sexual assault kit from the health care professional within 72 hours after receiving the notification.

(b) Except as provided in par. (c), send the sexual assault kit to the state crime laboratories for processing in accordance with the procedures specified in the rules promulgated under sub. (6) within 14 days after taking possession of the sexual assault kit.

(c) If the Wisconsin law enforcement agency, after taking possession of the sexual assault kit under par. (a) but before sending the sexual assault kit under par. (b), receives notification from the victim that the victim does

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

not want to proceed with the analysis of his or her sexual assault kit, send the sexual assault kit to the state crime laboratories for storage in accordance with the procedures specified in the rules promulgated under sub. (6) within 14 days after taking possession of the sexual assault kit.

(4) If the state crime laboratories takes possession of a sexual assault kit, it shall do all of the following:

(a) If the victim chooses not to report the sexual assault to a Wisconsin law enforcement agency and thus has not consented to the analysis of his or her sexual assault kit, securely store the sexual assault kit for a period of 10 years, during which time the sexual assault victim may choose to report the assault to a Wisconsin law enforcement agency.

(b) If the victim chooses to report the sexual assault to a Wisconsin law enforcement agency and thus has consented to the analysis of his or her sexual assault kit, process the kit in accordance with the procedures specified in the rules promulgated under sub. (6).

(5) If a law enforcement agency takes possession of a sexual assault kit after it has been processed by the state crime laboratories, notwithstanding s. 968.205, it shall securely store the sexual assault kit for a period of 50 years, or until the date of the expiration of the statute of limitations, or until the end of the term of imprisonment or probation of a person who was convicted in the sexual assault case, whichever is longer.

(6) The department shall promulgate rules to administer this section.

SECTION 3. 165.845 (title) of the statutes, as affected by 2021 Wisconsin Act 50, is amended to read:

165.845 (title) Collection and reporting of crime and criminal justice data.

SECTION 4. 165.845 (1r) (a) (intro.) of the statutes, as affected by 2021 Wisconsin Act 50, is amended to read:

165.845 (1r) (a) (intro.) Collect information concerning the number and nature of offenses known to have been committed in this state, concerning sexual assault kits, as defined in s. 165.775 (1) (e), collected in this state, and concerning such other information as may be useful in the study of crime and the administration of justice. The department of justice may determine any other information to be obtained regarding crime, evidence, and justice system data or statistics. The information shall include all of the following:

SECTION 4b. 165.845 (1r) (a) 1. of the statutes, as affected by 2021 Wisconsin Act 50, is amended to read:

165.845 (1r) (a) 1. Data requested by federal agencies under the U.S. department of justice, including but not limited to the federal bureau of investigation under its system of uniform crime reports for the United States.

SECTION 5. 165.845 (1r) (b) of the statutes, as affected by 2021 Wisconsin Act 50, is amended to read:

165.845 (1r) (b) Furnish all reporting officials with instructions that specify the nature of the information required under par. (a), a simple format in which to submit the information, the time it is to be forwarded, the process for submitting the information, the method of classifying it, and any other matters that facilitate collection and compilation. The format provided under this paragraph shall, to the greatest extent feasible, minimize the time required by each law enforcement officer to submit the required information.

SECTION 6. 165.845 (1r) (e) of the statutes is created to read:

165.845 (1r) (e) Publish data at least annually on law enforcement agency compliance with the reporting requirement under par. (a) relating to sexual assault kits.

SECTION 8. 175.405 of the statutes is repealed.

SECTION 9. 895.537 of the statutes is created to read:

895.537 Liability exemption; sexual assault evidence collection. (1) In this section:

(a) “Health care professional” has the meaning given in s. 154.01 (3).

(b) “Sexual assault forensic examination” has the meaning given in s. 165.775 (1) (d).

(2) Any health care professional conducting a sexual assault forensic examination pursuant to informed consent or a court order is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(3) Any employer of the person under sub. (2) or any health care facility where the sexual assault forensic examination is conducted by that person has the same immunity from liability under sub. (2).

SECTION 10. Nonstatutory provisions.

(1) Within 180 days of the effective date of this subsection, the department of justice shall promulgate emergency rules under s. 227.24 to implement s. 165.775 for the period before the effective date of the permanent rules but not to exceed the period authorized under s. 227.24 (1) (c), subject to extension under s. 227.24 (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 11. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of ss. 165.77 (7), 165.775 (1) to (5), 165.845 (title), (1r) (a) (intro.) and 1., (b), and (e), 175.405, and 895.537 takes effect on the first day of the 7th month beginning after publication.